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Attorneys for Defendant Westlake Flooring Company, LLC dba
Westlake Financial Services.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

**TOWER INSURANCE COMPANY OF
NEW YORK**, a New York corporation,

Plaintiff,

v.

ROSE CITY AUTO GROUP, LLC, an
Oregon limited liability company;
LEONARD M. SHILEY, an individual;
THERESA BYLE, an individual;
LOGAN DRIEDRIC, an individual;
JOANNA STONER, an individual;
STEPHEN STONER, an individual;
LOVE MARTINO, an individual; **ANAN**
SRIVILAI, an individual; **CAMERON**
JOHNSON, an individual; **JONATHAN**
GILLBERT, an individual; **TINA**
HARRAL, an individual; **ROY**
WIEGAND, an individual; **NATHAN**
LANGER, an individual; **KAREN**
BERSINE, an individual; **MELISSA**
STEVENS, an individual; **TONY**
EDWARDS, an individual; **DEBBIE**
RECKTANGLE, an individual;
RODNEY JENKINS, an individual;
STEPHEN SCHANTIN, an individual;
BRITTANY LAWRENCE, an individual;
MATT REED, an individual; **SHERIAL**

Case No.: 3:14-cv-00975-MO

**DEFENDANT WESTLAKE FLOORING
COMPANY, LLC DBA WESTLAKE
FINANCIAL SERVICES' ANSWER,
COUNTERCLAIM, AND
CROSSCLAIMS**

REED, an individual; **RACHEL SCHANTIN**, an individual; **EZEKIAL HUNT**, an individual; **BOBBY HEAGLE**, an individual; **LANEY BLANKENSHIP**, an individual; **LONNEY FRANCIS**, an individual; **OREGON COMMUNITY CREDIT UNION**, an Oregon non-profit entity; **TWINSTAR CREDIT UNION**, a Washington nonprofit corporation; **LOBEL FINANCIAL CORPORATION**, a California corporation; **THE EQUITABLE FINANCE COMPANY**, an Oregon corporation; **UNITUS COMMUNITY CREDIT UNION**, an Oregon non-profit entity; **WESTLAKE FLOORING COMPANY LLC, DBA WESTLAKE FLOORING SERVICES**, a California limited liability company; and **DOES 1-30**,

Defendants.

Defendant Westlake Flooring Company, LLC dba Westlake Financial Services (“Westlake”), in response to plaintiff’s Complaint, admits, denies, and alleges as follows:

1.

Westlake admits the allegations contained in paragraph 1 of the Complaint.

2.

Westlake admits the allegations contained in paragraph 2 of the Complaint.

3.

With respect to paragraph 3 of the Complaint, Westlake admits that it is a California limited liability company. Westlake is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 3 of the Complaint and, therefore, denies the same.

4.

With respect to paragraph 4 of the Complaint, Westlake admits the allegations found in subparagraphs 4.1 and 4.2. Westlake further admits that it has asserted a claim against the bond. Westlake is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 4 of the Complaint and, therefore, denies the same.

5.

With respect to paragraph 5 of the Complaint, these allegations are directed to parties other than Westlake and no response is required of Westlake. To the extent an answer is required of Westlake, all allegations are denied.

FIRST COUNTERCLAIM

(Bond Claim)

6.

Westlake is a California limited liability company with a principal place of business in California.

7.

Upon information and belief, Tower Insurance Company of New York (“Tower”) is a New York corporation with its principal place of business in New York. Tower is authorized to post surety bonds in Oregon.

8.

At all material times, Rose City Auto Group, LLC (“Rose City”) was an Oregon limited liability company doing business as Rose City Auto Group. Leonard M. Shiley (“Shiley”) is a resident of Oregon and was at all material times the principal of Rose City. On or about May 15, 2013, Westlake and Tower entered into a Loan and Security Agreement, which was subject to an Addendum to Loan Security Agreement dated on or

about June 18, 2013 (collectively, the “Agreement”). The Agreement includes a Promissory Note (the “Note”) and an Individual Personal Guaranty (the “Guaranty”) signed by Shiley in favor of Westlake. Attached hereto as Exhibit 1 is a true copy of the Agreement.

9.

After execution of the Agreement and Guaranty, it came to Westlake’s attention that Rose City and Shiley committed fraud with respect to obligations to Westlake. As a result of this fraud, Westlake has a claim against the bond issued by Tower (Claim# 157-323; Bond No. CSBCU1000927)(the “Claim”). Westlake filed an Affidavit of Claim on or about February 14, 2014 for the total amount of \$44,748.33, which was acknowledged by Cinium Financial Services Corporation on behalf of Tower. Attached hereto as Exhibit 2 is a true copy of Westlake’s Affidavit of Claim and relevant documents substantiating its claim.

10.

Westlake is entitled to payment of its Claim out of any bond funds deposited with the Court.

FIRST CROSSCLAIM

(Breach of Agreement)

11.

Westlake realleges paragraphs 6, 7, 8, 9, and 10.

12.

Rose City has breached the Agreement. Westlake has been damaged in the amount of \$44,748.33. Additionally, Westlake is entitled to its reasonable attorney fees pursuant to paragraph 16 of the Agreement. Finally, Westlake is entitled to prejudgment and post-judgment interest at the statutory rate of 9% or, in the alternative, at the interest rate provided by the Note and the Agreement.

SECOND CROSSCLAIM

(Breach of Personal Guaranty)

13.

Westlake realleges paragraphs 6, 7, 8, 9, 10, and 12.

14.

As a personal guarantor, Shiley is personally liable for Rose City's liabilities under the Agreement.

THIRD CROSSCLAIM

(Fraud)

15.

Westlake realleges paragraphs 6, 7, 8, 9, 10, and 12, and 14.

16.

Shiley and Rose City have committed fraud against Westlake as outlined in the Claim. Westlake has been damaged in the amount of \$44,748.33. Additionally, Westlake is entitled to its reasonable attorney fees pursuant to paragraph 16 of the Agreement. Finally, Westlake is entitled to prejudgment and post-judgment interest at the statutory rate of 9% or, in the alternative, at the interest rate provided by the Note and the Agreement.

WHEREFORE, having fully answered the Complaint and allegations by plaintiff Tower in this matter, defendant Westlake prays for the following relief:

1. That Tower take nothing pursuant to its Complaint and judgment be entered in favor of t Westlake;
2. On Westlake's first counterclaim, for a judgment in the amount of its Claim;

3. On Westlake's first crossclaim, for a judgment against Rose City in the amount of its Claim including prejudgment and post-judgment interest, its costs and reasonable attorneys fees;

4. On Westlake's second crossclaim, for a judgment against Shiley in the amount of its Claim including prejudgment and post-judgment interest, its costs and reasonable attorneys fees;

5. On Westlake's third crossclaim, for a judgment against Rose City and Shiley in the amount of its Claim including prejudgment and post-judgment interest, its costs and reasonable attorneys fees;

6. For Westlake's costs and disbursements; and

7. For such further and additional relief as the Court deems just and equitable.

Dated this 8th day of October, 2014.

WHIPPLE & DUYCK, P.C.

By: /s/ Daniel L. Duyck
Daniel L. Duyck, OSB #972529
Of Attorneys for Defendant
Westlake Flooring Company, LLC dba
Westlake Financial Services

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 2014, I served the foregoing
DEFENDANT WESTLAKE FLOORING COMPANY, LLC DBA WESTLAKE FINANCIAL
SERVICES' ANSWER, COUNTERCLAIM, AND CROSSCLAIMS on the following:

Lawrence A. Wagner
Stewart Sokol & Gray LLC
2300 SW First Ave, Suite 200
Portland, OR 97201-0699

Michelle M Bertolino
Farleigh Wada Witt
121 SW Morrison St Ste 600
Portland OR 97204

Of Attorneys for
Tower Insurance Company of New York

Of Attorneys for
Unitus Community Credit Union

☐ by mailing a true and correct copy thereof by U.S. Postal Service, ordinary first class
mail, addressed to each attorney's last-known address and depositing in the U.S. mail at
Portland, Oregon, on the date set forth above;

☐ by mailing a true and correct copy thereof by U.S. Postal Service, certified mail,
return receipt requested, addressed to each attorney's last-known address and depositing in the
U.S. mail at Portland, Oregon, on the date set forth above;

☐ by causing a true and correct copy thereof to be hand-delivered to the above-
mentioned attorneys at each attorney's last-known office address on the date set forth above;

☐ by sending a true and correct copy thereof by overnight courier, addressed to each
attorney's last-known office address on the date set forth above;

☐ by delivering a true and correct copy thereof by electronic means [facsimile
transmission/e-mail], as provided in Fed. R. Civ. P. 5(b) (2) (E)

☒ via CM/ECF system

DATED this 8th day of October, 2014.

/s/ Daniel L. Duyck
Daniel L. Duyck, OSB #972529